

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**LUIS ZEPEDA**

Claimant

VS.

**PYRAMID ROOFING COMPANY AND  
NANCY & NORA FLORES d/b/a  
L&F ORIGINALS, LLP**

Respondents

AND

**LIBERTY MUTUAL INSURANCE COMPANY AND  
ST. PAUL TRAVELERS INSURANCE COMPANY**

Insurance Carriers

Docket No. 1,023,273

**ORDER**

Respondent Nancy & Nora Flores d/b/a L&F Originals, LLP (L&F) appealed the December 1, 2005, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

**ISSUES**

Claimant fell from a roof on March 17, 2005, and fractured both wrists. The accident occurred in Missouri. In the December 1, 2005, Order, Judge Hursh determined claimant's employment contract with L&F was formed in Kansas and, therefore, claimant's accident was subject to the Kansas Workers Compensation Act. Consequently, the Judge ordered L&F and its insurance carrier, St. Paul Travelers Insurance Company (St. Paul), to provide claimant with both medical benefits and temporary total disability benefits.

L&F and St. Paul contend Judge Hursh erred. They argue L&F did not directly speak with claimant to offer him employment and, therefore, claimant did not become an employee of L&F until he commenced working at the Missouri job site. In essence, they argue claimant's contract of employment with L&F was formed in Missouri and, consequently, the March 17, 2005, accident is not subject to the Kansas Workers Compensation Act. L&F and St. Paul ask the Board to set aside the December 1, 2005, Order.

Conversely, claimant contends the Order should be affirmed. Claimant argues L&F authorized claimant's brother to assemble a roofing crew. Accordingly, claimant argues he accepted an offer of employment from his brother while in Kansas and, therefore, his accident is subject to the Kansas Workers Compensation Act.

The only issue before the Board on this appeal is whether claimant entered into a contract of employment with L&F that was formed in Kansas.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, this Board member concludes the December 1, 2005, Order should be affirmed.

L&F is a roofing company. At this juncture of the claim, the evidence establishes that a representative of L&F telephoned claimant's brother, Victor Zepeda, advising him of a roofing job in the Kansas City, Missouri, metropolitan area. The evidence is uncontradicted that the representative of L&F told claimant's brother to bring other workers. Victor Zepeda testified, in part:

Q. (Mr. Herdoiza) And did he [Fortino Lopez] ask you to bring other people along with yourself or did he just tell you to come alone?

A. (Victor Zepeda) He told me to come with all the guys that I needed -- with all the guys that I needed to show up.

. . . .

Q. Okay. Did you tell him [Fortino Lopez] that you would be bringing your brother to work the next day?

A. Yes.

Q. And what did he say? Did he say okay?

A. Yes.<sup>1</sup>

Moreover, claimant's testimony is uncontradicted that following the above telephone call Victor then offered claimant a position on the roofing crew that was being assembled and that he accepted, with this conversation between claimant and his brother occurring in Kansas. Claimant's brother had been given the authority to hire other workers when he

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<sup>1</sup> P.H. Trans. (July 25, 2005) at 9.

offered claimant employment and claimant's acceptance completed the contract. And this took place in Kansas.

In short, at this juncture claimant has proven it is more probably true than not that the contract of employment to work for L&F was formed in Kansas. Consequently, claimant's March 17, 2005, accident is subject to the Kansas Workers Compensation Act as provided by K.S.A. 44-506.

As provided by the Kansas Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.<sup>2</sup>

**WHEREFORE**, the December 1, 2005, Order entered by Judge Hursh is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January, 2006.

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BOARD MEMBER

c: C. Albert Herdoiza, Attorney for Claimant  
John M. Graham, Jr., Attorney for Pyramid and Liberty Mutual  
Randall W. Schroer, Attorney for L&F and St. Paul  
Kenneth J. Hursh, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>2</sup> K.S.A. 44-534a(a)(2).